

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

**WESLEY MCANALLY, ON §
BEHALF OF HIMSELF AND ALL §
OTHERS SIMILARLY SITUATED, §
§
PLAINTIFF §**

v. §

CIVIL ACTION NO. 5:24-cv-1393

**ELITE FIBER, LLC, JOHN §
MUSCHALEK AND LINDA §
MUSCHALEK, INDIVIDUALLY, §
§
DEFENDANTS §**

MOTION FOR ALTERNATIVE SERVICE OF PROCESS

Plaintiff's private process server has tried several times to serve Defendants and has not been able to do so despite his best efforts. It appears that Mr. and Mrs. Muschalek are not making themselves available for service of process and are in fact avoiding service of process. Therefore, Plaintiff Wesley McAnally asks the Court to allow alternative service of process on the Defendants.

Facts Supporting Relief

1. After filing this suit on December 6, 2024, Plaintiff retained a private process service company to effect service on the Defendants. The process server attempted service on Mr. and Mrs. Muschalek, both individually and (in the case of John Muschalek) as the registered agent for Elite Fiber, LLC (Exh. 1 – Texas Secretary of State Document) at 29576 Copper Crossing, Bulverde, Texas 78163 (Exh. 2 – Process Server Affidavit). A neighbor told the

process server that the Muschaleks had not been around for about the last month and that they had stated they were moving.

2. The process server then learned of a new address and tried to serve the Defendants at 817 Paddy Rd., Floresville, Texas. The Muschaleks purchased a new home at this address on October 11, 2024 (Exh. 3). The process server tried to get service on the Defendants at the new address three times. The first time, the Muschalek's daughter told them that she would not accept service, the second time, no one answered, and the third time, the Muschaleks had put several "no trespassing" signs up on the property (Ex. 2)

3. Plaintiff does not want the process server to be in danger of arrest or injury for trespassing, so service upon John Muschalek, Linda Muschalek, and Elite Fiber LLC, can be made by mailing a copy of the complaint, order for conference and summonses, as well as a copy of any order authorizing alternative service issued by this Court to John Muschalek, Linda Muschalek, and Elite Fiber, LLC at 817 Paddy Rd., Floresville, Texas 78114 by both regular and certified mail.

4. Plaintiff prays that the Court grant this motion and allow service as stated above.

Respectfully Submitted,

/s/ Josef F. Buenker

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**ATTORNEY FOR PLAINTIFF
WESLEY MCANALLY**

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2025, I electronically filed a copy of the foregoing Motion to for Alternative Service of Process and served it by electronic transmission through the Court's CM/ECF system.

/s/ Josef F. Buenker

Josef F. Buenker